

ARKANSAS SUPREME COURT

No. CR 05-601

NOT DESIGNATED FOR PUBLICATION

DONALD SPORER
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 15, 2006

APPEAL FROM THE CIRCUIT COURT
OF CLARK COUNTY, CR 2003-102,
HON. JOHN ALEXANDER THOMAS,
JUDGE

AFFIRMED

PER CURIAM

A judgment entered November 5, 2003, reflects that appellant Donald Sporer entered a plea of *nolo contendere* to the charge of fourth-degree sexual assault on October 28, 2003, and was sentenced to twelve months' probation. Appellant filed a petition for writ of error *coram nobis* in the trial court that was denied by order entered March 15, 2005. Appellant now brings this appeal of that order.

Where a judgment of conviction was entered on a plea of guilty or *nolo contendere*, or the judgment of conviction was not appealed, a petition for writ of error *coram nobis* is filed directly in the trial court. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*). Denial of a writ of error *coram nobis* is reviewed by appeal. *Magby v. State*, 348 Ark. 415, 72 S.W.3d 508 (2002) (*per curiam*). The standard of review of the denial of a writ of error *coram nobis* is whether the trial court abused its discretion in granting or denying the writ. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly.

Id.

Appellant alleged in his petition that his attorney had advised him that, if he pleaded no contest to the charge, he would receive probation, and after the successful completion of that probation, would be relieved of the requirement to register as a sex offender. Appellant submitted an application for an order terminating his obligation to register as a sex offender filed by the attorney on October 28, 2004, in support of his claim. The statute as it currently reads and as in effect at the time of that application, Ark. Code Ann. § 12-12-919 (Supp. 2005), provides only that a sex offender may make an application for an order terminating the obligation to register fifteen years after a sex offender has been placed on probation.¹ Appellant asserted in his petition that he would not have entered a plea had he been accurately advised on this matter and that his plea was coerced or invalid as a result. He further contended that because he relied upon advice from counsel that was wrong in deciding to enter his plea, his allegation fell within the function of relief provided by a writ of error *coram nobis*. We do not agree that appellant's claim was cognizable for relief under error *coram nobis*.²

¹Act 21, § 10 of the Second Extraordinary Session of 2003, modified section 12-12-919(b)(1)(A)(I) effective June 3, 2004, to insert the language providing the fifteen-year restriction on submitting an application. The prior statute did contain language in Section 12-12-919(b)(2)(A) requiring a finding by the trial court that the applicant had not been adjudicated guilty of a sex offense within fifteen years of release from prison or probation before the trial court was required to grant an order terminating the obligation to register, but there was no time restriction in section 12-12-919(b)(1)(A)(I) on the right to make an application.

²The State argues that appellant's claim for relief was moot because his sentence has been served. *See Anderson v. State*, 352 Ark. 36, 98 S.W.3d 403 (2003) (*per curiam*). Appellant urges us to conclude that he was still under sentence, contending that the requirement to register as a sex offender is a direct consequence of his plea and inviting us to reconsider our holding in *Kellar v. Fayetteville Police Department*, 339 Ark. 274, 5 S.W.3d 402 (1999). *Kellar* held that the registration requirement is not punitive in nature. Because we find that appellant's petition failed to state a cognizable claim, we do not reach the issue.

The function of the writ of error *coram nobis* is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird*, 357 Ark. at 450, 182 S.W.3d at 479. *Coram nobis* proceedings are attended by a strong presumption that the judgment of conviction is valid. *Echols v. State*, 360 Ark. 332, ___ S.W.3d ___ (2005). The writ is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark.397, 17 S.W.3d 87 (2000).

We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). Appellant argues that his claim falls within the category of a coerced guilty plea, but appellant's allegations are not equivalent to a claim of coercion. The facts as stated do not allege such compulsion or force, and his claim is simply one of ineffective assistance of counsel, rather than coercion.

A claim of ineffective assistance of counsel in itself is not a ground to grant a writ of error *coram nobis*. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (*per curiam*). Appellant argues that, as relief under Ark. R. Crim. P. 37.1 was not available to him because he was not in custody, he was left with no remedy for an ineffective assistance of counsel claim without error *coram nobis* relief. However, there is no constitutional right to a postconviction proceeding. *Robinson v. State*, 295 Ark. 693, 751 S.W.2d 335, 339 (1988) (*per curiam*). We do not choose to expand the narrow remedy provided by a writ of error *coram nobis* to include claims of ineffective assistance of counsel, even where a defendant has no other remedy. As appellant's petition did not state a

cognizable claim, the trial court did not abuse it's discretion in denying the writ.

Affirmed.